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11 Attorneys for Defendants
12 DAVID GILBERT SAFFRON and
13 CIRCLE SOCIETY, CORP.

14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF NEVADA**

16 COMMODITY FUTURES TRADING
17 COMMISSION,

18 Plaintiff,

19 v.

20 DAVID GILBERT SAFFRON, a/k/a DAVID
21 GILBERT, and CIRCLE SOCIETY, CORP.,

22 Defendants,

Case Number 2:19-cv-1697-JAD-DJA

**GUTKE LAW GROUP'S MOTION TO
WITHDRAW AS COUNSEL FOR
DEFENDANTS**

23 Gutke Law Group, PLLC ("GLG"), current counsel for defendants David
24 Saffron ("Saffron") and Circle Society, Corp. ("CS," and together with Saffron,
25 "Defendants") files this Motion to Withdraw as Counsel for Defendants. This motion
26 is made and based declaration of John H. Gutke, Esq. and the following Memorandum
27 of Points and Authorities, and the pleadings and documents on file herein.
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**DECLARATION OF JOHN H. GUTKE, ESQ. IN SUPPORT OF GUTKE LAW GROUP'S
MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANTS**

1. I, John H. Gutke, am an attorney at the law firm Gutke Law Group, PLLC, and am the sole owner of GLG. I have personal knowledge of the facts and circumstances stated herein, and as for those stated on information and belief, I believe them to be true.

2. GLG was retained by Mr. Saffron and CS in December 2020 and entered an appearance for Defendants in this matter by filing a Notice of Appearance of Counsel (ECF No. 89) on December 13, 2020.

3. Following its retention, GLG proceeded to spend a significant amount of time and resources representing Defendants by spending dozens of hours performing the following tasks, among other things: reviewing, evaluating, and analyzing the extensive docket in this matter; researching the relevant laws and facts at issue; communicating with the client; communicating with opposing counsel; preparing extensive briefs and declarations in response to motions filed by Plaintiff; and preparing for and attending the recent hearing held on March 19, 2021, among other tasks for which GLG's attorneys' time has been billed to Defendants.

4. After Defendants' initial retainer was exhausted, I requested additional payment from Defendants to continue representation in February 2021. Unfortunately, Defendants have not been able to make the necessary payments to meet their financial obligations to GLG to pay for work performed by GLG, let alone to provide an additional retainer to keep GLG retained as its counsel of record in this matter for future work to be completed.

5. As a result of Defendants' failure to meet their financial obligations to GLG, a breakdown in the attorney-client relationship between GLG and Defendants has occurred. Fundamental disagreements exist between GLG and Defendants, which make it impossible for GLG to continue as Defendants' counsel.

6. There are no pending trial dates or hearing dates, and withdrawal

1 therefore will not cause any delay in this proceeding. Defendants have been notified of
 2 GLG's intent to withdraw. On March 21, 2021, I informed Saffron that GLG will be
 3 filing the present motion. He indicated his understanding, stated that Defendants
 4 would not oppose GLG's request for immediate withdrawal, and terminated GLG's
 5 representation—instructing GLG to cease performing any work on Defendants' behalf
 6 in this matter from that point forward.

7 7. Based on the foregoing, GLG is requesting that its motion to withdraw as
 8 counsel be granted immediately, to prevent it from incurring additional financial
 9 hardship and to allow Saffron to represent himself or locate replacement counsel.

10 I declare under penalty of perjury under the laws of the United States of
 11 America that the foregoing is true and correct.

12 Dated: March 22, 2021

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14 John H. Gutke, Esq.

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17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 Gutke Law Group moves this Court for an order allowing GLG to withdraw as
 19 counsel of record for Defendants in this matter.

20 Local Rule IA 11-6 states that if an attorney seeks to withdraw after appearing
 21 in a case, the attorney must file a motion and serve it on the affected client or counsel.
 22 Rule of Professional Conduct 1.16 provides that an attorney may withdraw if the client
 23 "fails substantially to fulfill and obligation to the lawyer regarding the lawyer's
 24 services and has been given reasonable warning that the lawyer will withdraw unless
 25 the obligation is fulfilled."¹ An attorney may also withdraw if the "representation will
 26 result in an unreasonable financial burden on the lawyer."²

27 _____
 28 ¹ Nevada Rule of Professional Conduct 1.16(b)(6).

² *Id.* at subparagraph (b)(6).

1 In this matter, GLG was retained in December 2020, and entered a Notice of
 2 Appearance on December 13, 2020 (ECF No. 89).³ Since its retention, GLG has spent a
 3 significant amount of time and resources representing Defendants by spending
 4 dozens of hours performing customary tasks in furtherance of its representation of
 5 Defendants.⁴ After Defendants' initial retainer paid to GLG was spent, GLG requested
 6 additional payments from Defendants, but Defendants have not paid for all of the
 7 legal services provided to date, nor have they paid an additional retainer as requested
 8 by GLG to continue its representation.⁵ In short, Defendants have been unable to meet
 9 their financial obligations to GLG.⁶

10 As a result of Defendants' failure to meet their financial obligations to GLG, a
 11 breakdown in the attorney-client relationship between GLG and Defendants has
 12 occurred.⁷ Fundamental disagreements exist between GLG and Defendants, which
 13 make it impossible for GLG to continue as Defendants' counsel.⁸

14 On March 21, 2021, GLG informed Defendants of GLG's intent to withdraw as
 15 counsel.⁹ Defendants have indicated they would not oppose GLG's request for
 16 immediate withdrawal and terminated GLG's representation—instructing GLG to
 17 cease performing any work on Defendants' behalf in this matter.¹⁰

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23 ³ See Gutke Declaration, *supra*, at ¶ 2.

24 ⁴ *Id.* at ¶ 3.

25 ⁵ *Id.* at ¶ 4.

26 ⁶ *Id.*

27 ⁷ *Id.* at ¶ 5.

28 ⁸ *Id.*

⁹ *Id.* at ¶ 6.

¹⁰ *Id.*

1 Accordingly, GLG respectfully requests on order from the Court immediately
2 granting GLG's motion to withdraw as Defendants' counsel of record in this matter.
3 A proposed order granting GLG's motion is attached hereto as Exhibit A.

4 Dated: March 22, 2021.

5 **GUTKE LAW GROUP, PLLC**

6
7 /s/ John H. Gutke

8 JOHN H. GUTKE, ESQ.

9 JOHN P. WITUCKI, ESQ.

10 552 E. Charleston Blvd.

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16 **LIST OF EXHIBITS**

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18 Exhibit A [Proposed] Order Granting Motion to Withdraw as
19 Defendants' Counsel
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GUTKE LAW GROUP
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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of March 2021, the foregoing *Motion to Withdraw as Counsel for Defendants* was electronically served on all persons registered to receive electronic service in this matter by filing this document with the Clerk of Court using the CM/ECF system. I further certify that I have served a copy the foregoing motion on Defendants by delivering it electronically to defendant David Saffron—both for himself individually and on behalf of defendant Circle Society Corp.

/s/ John Gutke

An employee of Gutke Law Group

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